No. 80-401

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

HARRY J. RUBIN and MARGARET C. RUBIN,

Appellants,

vs.

SIDNEY GLASER, Director of the Division of Taxation, Department of the Treasury, State of New Jersey, and A. JAMES REEVES, Tax Assessor, Long Beach Township, Ocean County, New Jersey,

Appellees.

On Appeal from the Supreme Court of New Jersey

MOTION TO DISMISS AND BRIEF IN SUPPORT THEREOF

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Motion to Dismiss

Pursuant to Rule 16(1)(b) of this Court, the Attorney General of the State of New Jersey, on behalf of the Appellee, Sidney Glaser, Director, Division of Taxation, hereby moves to dismiss this appeal because it does not present a substantial federal question.

Question Presented

Does the Privileges and Immunities Clause of Art. IV, § 2, cl. 1 or the Equal Protection Clause of the Fourteenth Amendment preclude New Jersey from providing an annual tax rebate under the Homestead Rebate Act, N.J.S.A. 54:3.80 *et seq.*, to owners of property which is used as a principal place of residence while excluding the owners of vacation homes and other property not used as a principal place of residence from qualifying for the rebate.

Statement of the Case

The issue presented in this case relates to the validity of the Homestead Rebate Act (the "act"), which provides a rebate of property taxes imposed upon the owner-occupied principal place of residence. The act states, in pertinent part, that:

> "Every citizen and resident of this State shall be entitled, annually, to a homestead rebate on a dwelling house and the land upon which such dwelling house is situated, or on a dwelling house assessed as real estate situated on land owned by another or others *which constitutes the place of his domicile and which is owned and used by him as his principal residence.*" (emphasis added). N.J.S.A. 54:4-3.80(a).

The act provides that the rebate is payable only to the owner of property which constitutes his principal place of residence. The rebate is, therefore, not a general reduction of property taxes nor is it directed at reducing property taxes imposed on residential property. Rather, the statute explicitly limits the rebate to those properties which are owner-occupied and utilized as a principal place of residence.

The act became law in 1976 as part of a package of tax reform legislation which included the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 *et seq.*, whose revenues are the source for the rebate funds. N.J.S.A. 54A:9-25. Real property taxes are imposed in the State of New Jersey under a Local Property Tax Act, N.J.S.A. 54:4-1 *et seq.*, pursuant to which property taxes are assessed and collected by each taxing district in the State. The rebate act is a State law providing local property tax relief to a property owner's principal place of residence by use of State income tax revenues. The rebate act, therefore, does not affect the local property tax revenues collected by the municipalities.

The appellants, Harry J. and Margaret C. Rubin, are domiciliaries of the State of Pennsylvania and thus maintain their principal place of residence in that State. The Rubins also maintain a second home in Long Beach Township, Ocean County, New Jersey, which is used as a vacation retreat. The appellants are both employed in Pennsylvania and are not subject to the New Jersey Gross Income Tax. As Pennsylvania domiciliaries, the appellants are registered to vote in Pennsylvania and their children attend school in that State.

The appellants filed an application for a 1977 homestead rebate with the Long Beach Township assessor on October 22, 1976. Following the denial of the application, the appellants challenged the denial by filing a petition of appeal with the Ocean County Board of Taxation, which affirmed the assessor. Appellants appealed the County Board judgment to the Division of Tax Appeals, which entered a judgment on December 21, 1977 dismissing the appeal. The matter was further appealed to the New Jersey Superior Court, Appellate Division. The Appellate Division affirmed the judgment of the Division of Tax Appeals in

an opinion dated February 1, 1979 and reported at 166 N.J. Super. 258, 399 A. 2d 984 (App. Div. 1979). On June 19, 1980 the Supreme Court of New Jersey, in a comprehensive opinion reported at 83 N.J. 299, —— A. 2d —— (1980), sustained the validity of the Homestead Rebate Act.

ARGUMENT

The appeal should be dismissed because the appellants have not presented a substantial federal question.

A. The Homestead Rebate Act is consistent with the requirements of the Privileges and Immunities Clause of Article IV of the United States Constitution because it was enacted to provide tax relief to the owner of his principal place of residence and thereby promote the concept of homeownership.

The Privileges and Immunities Clause of Art. IV, § 2, cl. 1 of the United States Constitution establishes a norm of comity (*Austin* v. *New Hampshire,* 420 U.S. 656, 660 (1975)), so as,

> ". . . to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned." *Paul* v. *Virginia,* 75 U.S. 168, 180 (1869).

In its recent expression of the scope of the Privileges and Immunities Clause, this Court noted the amendment was adopted to insure that a basis of equality would prevail among the states with respect to their treatment of each other's residents. *Hicklin* v. *Orbeck,* 437 U.S. 518, 523-524 (1978). The purpose of the Clause was ". . . to prevent a

State from imposing unreasonable burdens on citizens of other States . . ." regarding matters touching on ". . . the validity of the Nation as a single entity. . . ." *Baldwin* v. *Montana Fish & Game Commission,* 436 U.S. 371, 383 (1978). Among the subjects concerning which the states must legislate in a manner consistent with this principle is the taxation of nonresidents. *Austin* v. *New Hampshire, supra.*

The Privileges and Immunities Clause was not meant to preclude states from legitimately enacting laws that established justifiable classifications affecting residents differently than non-residents.

> "Like many other constitutional provisions, the privileges and immunities clause is not an absolute. It does bar discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other States. But it does not preclude disparity of treatment in the many situations where there are perfectly valid independent reasons for it. Thus the inquiry in each case must be concerned with whether such reasons do exist and whether the degree of discrimination bears a close relation to them. The inquiry must also, of course, be conducted with due regard for the principle that the States should have considerable leeway in analyzing local evils and in prescribing appropriate cures." *Toomer* v. *Witsell,* 334 U.S. 385, 396 (1948).

Consistent with this policy, the Court has sustained, under the Privileges and Immunities Clause, tax classifications relating to residency which had a valid independent purpose other than mere residency. In *Travellers' In-*

surance Company v. *Connecticut,* 185 U.S. 364, (1902), this Court upheld a Connecticut tax imposed upon the owners of stock of domestic corporations which permitted residents owning such stock to deduct an allocable share of real estate taxes paid by the corporation from the fair market value of the stock while not according that same deduction to nonresidents. This taxing scheme was sustained on the basis that the non-residents were being taxed in proportion to the benefits bestowed upon them by the taxing state.

> "It is enough that the state has secured a reasonably fair distribution of burdens and that no intentional discrimination has been made against nonresidents." 185 U.S. at 371.

In *Shaffer* v. *Carter,* 252 U.S. 37, 56-57 (1920), the Court upheld a section of the Oklahoma income tax which allowed residents to deduct from their gross income losses incurred not only within Oklahoma but also outside the State while nonresidents were permitted to deduct only losses incurred within the State. See also *Davis* v. *Franchise Tax Board,* 71 Cal. App. 3d 998, 139 Cal. Rptr. 797 (Cal. Ct. of App. 1977), dismissed for want of substantial federal question, 434 U.S. 1055 (1978), sustaining California income tax provision permitting only residents to utilize income averaging statute; *Wheeler* v. *State,* 127 Vt. 361, 249 A. 2d 887 (Vt. Sup. Ct. 1969), dismissed for want of substantial federal question, 396 U.S. 4 (1969), affirming differential tax rates placed on residents as opposed to non-residents under the Vermont income tax; *Anderson* v. *Tiemann,* 182 Neb. 393, 155 N.W. 2d 322 (Neb. Sup. Ct. 1967), dismissed for want of substantial federal question, 390 U.S. 714 (1968), upholding the validity of permitting only residents to take food sales tax expenses as a credit under the Nebraska income tax; *Berry* v. *State Tax Commission,* 241

Ore. 580, 397 P. 2d 780 (Ore. Sup. Ct. 1964), dismissed for want of substantial federal question, 382 U.S. 16 (1965), affirming the propriety of a provision under the Oregon income tax law which allowed only residents to deduct certain personal expenses related to their place of residency.*

The Homestead Rebate Act, providing a tax rebate limited to property used as the principal residence of the owner, is clearly consistent with these principles. The focus of the rebate statute is on the concept of principal place of residency and not, as appellants maintain, on New Jersey residency. As correctly identified by the Supreme Court of New Jersey, principal residence is clearly the operative provision of the statute triggering qualification for the rebate payment. Appellants, therefore, have the same option as any other individual maintaining a vacation home in this State, namely the privilge of utilizing said home as the principal residence. Had the Rubins maintained their Long Beach Township property as their principal place of residence, they would have unequivocally qualified for the rebate. The facts of this case, however, are otherwise and firmly establish that appellants did not occupy the Long Beach Township property as their principal residence and thus were not entitled to the rebate for said property.

The homestead rebate also serves important public purposes which are unrelated to nonresidents. The New

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* Appellants' contention that the holding in these cases is limited to excise taxes and not to property taxes is unsupported and is clearly without constitutional significance in the context of the Privileges and Immunities Clause. Moreover, since the Homestead Rebate Act is funded by income tax revenues and not by local property tax revenues, the statute could have easily been formulated to grant the rebate to the homeowner in the form of a direct credit or deduction under the New Jersey Gross Income Tax Law.

Jersey Legislature, concluding that it was in the public interest to decrease the impact of unduly high local property taxes which operate as an impediment to homeownership, determined to utilize a portion of gross income tax revenues to reduce property tax assessments upon owner-occupied principal places of residence. At the same time, the New Jersey Legislature evidently did not perceive the same need to encourage ownership of property for vacation, recreation and other purposes unrelated to a family maintaining a homestead for itself. It is also highly significant that, since the intent of the Homestead Rebate Act is to provide relief from property taxes paid on the family homestead rather than to discriminate against nonresidents, it is unavailable to a substantial number of New Jersey residents. Thus, the rebate is generally not available with respect to commercial and industrial property owned by New Jersey residents and is also unavailable to any of the New Jersey residents who maintain their principal places of residence in the numerous renter-occupied units in this State. These renters include many New Jersey residents who maintain their principal places of residence in rented apartment units while simultaneously owning residential property which they occupy on a seasonal basis. Such residents are in the same tax posture as the appellants and do not qualify for the homestead rebate, since the only residential property they own in New Jersey is not their principal residence.

Appellants have failed to demonstrate that the denial of the homestead rebate with regard to their vacation home in New Jersey has exceeded the constitutional parameters of the Privileges and Immunities Clause. This Court has conclusively established in its prior decisions the propriety on the part of a taxing state to properly condition tax benefits on residency as long as such tax preference

advanced a valid state interest. The Homestead Rebate Act clearly evidences New Jersey's valid interest in promoting the concept of homeownership. Therefore, the present case, as it relates to the Privileges and Immunities Clause, does not involve unsettled constitutional questions requiring the further review by this Court.

B. The Homestead Rebate Act is consistent with the Equal Protection Clause of the Fourteenth Amendment because it serves the rational purpose of providing tax relief to the owner-occupier of a principal place of residence.

It is fundamental to equal protection analysis that the Legislature has a wide range of discretion in classifying persons for different treatment and that such discretion is especially broad in the field of taxation:

> ". . . it has . . . been pointed out that *in taxation, even more than in other fields, legislatures possess the greatest freedom in classification.* Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. . . ." (emphasis added.) *Madden* v. *Kentucky,* 309 U.S. 83, 87-88 (1940).

The rationale for this broad view of government's taxing powers has been explained as follows:

> "The only benefit to which the taxpayer is constitutionally entitled is that derived from his enjoyment of the privilege of living in an organized society, established and safeguarded by the devotion

> of taxes to public purposes. . . . Any other view would preclude the levying of taxes except as they are used to compensate for the burden on those who pay them, and would involve the abandonment of the most fundamental principle of government—that it exists primarily to provide for the common good. This court has repudiated the suggestion, whenever made, that the Constitution requires the benefits derived from the expenditure of public moneys to be apportioned to the burdens of the taxpayer, or that he can resist the payment of the tax because it is not expended for purposes which are peculiarly beneficial to him." *Carmichael* v. *Southern Coal & Coke Co.,* 301 U.S. 495, 522-523 (1937).

This Court has, therefore, established that a state may classify the subjects of taxation for differing treatment upon any basis which bears a rational relation to a legitimate end of government. *Lehnhausen* v. *Lake Shore Auto Parts Co.,* 410 U.S. 356 (1973); *Allied Stores of Ohio, Inc.* v. *Bowers,* 358 U.S. 522 (1959). Furthermore, this broad power of the Legislature to structure a state's tax system is not constricted simply because the attacking party happens to be a nonresident. *General America Tank Car Corp.* v. *Day,* 270 U.S. 367 (1926); *Shaffer* v. *Carter, supra; Travelers Insurance Company* v. *Connecticut, supra.* Therefore, the appellants' challenge to the Homestead Rebate Act under the Equal Protection Clause can only be sustained if there is no rational basis for the statute.

The same legal basis which establishes the validity of the rebate statute under the Privileges and Immunities Clause supports *a fortiori* the propriety of the statute under the Equal Protection Clause. The concept of providing tax relief to the homeowner and thereby encouraging homeownership in New Jersey clearly constitutes a valid

and rational legislative purpose which passes muster under equal protection analysis. Therefore, the applicable considerations which establish the constitutionality of the Homestead Rebate Act under the Privileges and Immunities Clause similarly establish the validity of the statute under the Equal Protection Clause and conclusively demonstrate that there is no need for further review of this question by this Court.

CONCLUSION

It is respectfully submitted, therefore, that the appellants have not presented any substantial federal questions which warrant the further attention of this Court and that this appeal should be dismissed.

Respectfully submitted,

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